

1 KEVIN V. RYAN (CASBN 118321)  
United States Attorney

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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN FRANCISCO DIVISION  
11

12 UNITED STATES OF AMERICA, ) No.

13 Plaintiff, )

14 v. )

15 PHILIP J. LUM, )

16 Defendant. )

VIOLATIONS: 18 U.S.C. § 371 -  
Conspiracy to Commit Honest Services  
Mail Fraud; 18 U.S.C. §§ 1341, 1346,  
and 2 – Honest Services Mail Fraud and  
Aiding and Abetting (2 Counts)

17 SAN FRANCISCO VENUE  
18 )

19 INDICTMENT

20 The Grand Jury charges:

21 COUNT ONE: (18 U.S.C. § 371 – Conspiracy to Commit Honest Services Mail Fraud)

22 INTRODUCTION

23 At all times relevant to this Indictment:

24 1. Defendant PHILIP J. LUM (“LUM”) was a city council member on the  
25 Colma City Council in Colma, California. He began serving on the Colma City Council  
26 in or around 1986.

27 2. On or about June 27, 1998, Lucky Chances Casino opened in Colma,  
28 California. As a member of the Colma City Council, LUM voted on issues concerning

INDICTMENT

1 Lucky Chances Casino.

2 DUTY OF HONEST SERVICES

3 3. Members of the Colma City Council owed a general fiduciary duty to  
4 provide honest services to the people of Colma, the city of Colma, the people of  
5 California, and the state of California, that arose from both common-law and California  
6 law, as set forth in more detail in the following paragraphs. As part of his fiduciary duty,  
7 LUM had the obligation to disclose material conflicts of interest, and comply with ethical  
8 and disclosure requirements imposed by California State law.

9 4. The Political Reform Act of 1974 (California Government Code Sections  
10 81000-91014) required state and local public officials and employees to disclose certain  
11 personal financial holdings, including, but not limited to, certain gifts and loans. As a  
12 Colma City Councilman, LUM had the duty to disclose on his annual California Form  
13 700, Statement of Economic Interest, gifts whose aggregate fair market value from any  
14 single source during a single reporting period was \$50 or more.

15 5. Certain California criminal laws governed Lum's conduct with respect to  
16 the disclosure of conflict of interest, including, but not limited to, the following:

- 17 a. Pursuant to California Government Code Sections 87207(a) and  
18 91000, as a member of the Colma City Council, LUM was required  
19 to disclose certain income, gifts, and loans, including gifts whose  
20 value was \$50 or more.
- 21 b. Pursuant to California Penal Code Sections 118 and 129, LUM was  
22 prohibited from committing perjury, which included knowingly  
23 making a false statement under oath, when required by law to make  
24 any return, statement, or report under oath.
- 25 c. Pursuant to California Penal Code Section 68, LUM was prohibited  
26 from asking to receive, agreeing to receive, or receiving any bribe  
27 (as defined in California Penal Code Section 7) upon any agreement  
28 or understanding that his action upon any matter in his official

capacity shall be influenced by such a bribe.

- d. Pursuant to California Penal Code Section 70, LUM was prohibited from knowingly asking to receive, agreeing to receive, or receiving any unauthorized emolument, gratuity, reward, or promise thereof for performing any official act.

THE SCHEME TO DEFRAUD

6. Beginning no later than on or about October 25, 1999, and continuing through on or about October 9, 2002, in the Northern District of California and elsewhere, the defendant,

PHILIP J. LUM,

did knowingly and willfully agree, combine, and conspire with others known and unknown to the Grand Jury, to devise and participate in a scheme and artifice to defraud the city of Colma, the people of Colma, the state of California, and the people of California, of their intangible right to his honest services as a City Council member, by means of materially false and fraudulent pretenses, representations, and promises, and material omissions, and in doing so, knowingly caused the United States mails to be used for the purpose of executing this scheme, as further described below.

7. It was part of the scheme to defraud that LUM, knowingly and with intent to defraud, failed to disclose financial interests in a material manner and took discretionary action in his official capacity that he knew would directly benefit the concealed financial interest.

Manner and Means of the Scheme and Conspiracy

8. It was part of the scheme and conspiracy that LUM received one or more gifts each valued at more than \$50, but did not report the gifts as required on his California Form 700 for the years 1999, 2000, and 2001.

9. After failing to disclose the gift(s), and thereby concealing a financial interest, LUM took certain discretionary actions in his position as Colma City Council member which he knew would directly benefit that concealed financial interest. In doing

1 so, LUM violated California laws, as set forth above, and his common-law fiduciary duty.

2 Overt Acts

3 10. In furtherance of the conspiracy and to accomplish the goals thereof, the  
4 defendant LUM and others committed, and caused to be committed, overt acts, including  
5 at least one of the following, in the Northern District of California and elsewhere:

6 11. On a date unknown, but no later than October 25, 1999, an individual  
7 known to the Grand Jury ("Person A") contacted LUM about going to the Philippines  
8 with another person known to the Grand Jury ("Person B"). Person A told LUM that he  
9 would not have to pay for the trip. Person A told LUM not to worry, that no one would  
10 ever know.

11 12. On or about October 25, 1999, LUM, Person A, and Person B traveled by  
12 first class airfare to the Philippines. Lucky Tours, a travel agency owned by Person B,  
13 arranged the airline ticket. LUM did not pay for the airfare or the hotel accommodations  
14 for the October 25, 1999, trip to the Philippines, and believed that Person B paid for the  
15 trip.

16 13. On or about November 5, 1999, Person B paid for and caused to be paid  
17 LUM's airfare for the October 25, 1999, trip to the Philippines. The cost of LUM's  
18 airfare exceeded \$50.00.

19 14. On or about October 25, 1999, Person B caused a Lucky Tours invoice to  
20 be issued in the name of Person A which equaled the price of the airline tickets for person  
21 A and LUM to travel to the Philippines on or about October 25, 1999. The invoice  
22 described the expense as "Bus to Reno."

23 15. On or about February 18, 2000, LUM and Person A traveled to the  
24 Philippines, and LUM did not pay for his airfare for the trip.

25 16. Lucky Chances Casino, a casino owned by person B, and/or Person B paid  
26 for and caused to be paid for the airfare for LUM's February 18, 2000, trip to the  
27 Philippines. Lucky Tours arranged the airline ticket. The cost of LUM's airfare for this  
28 trip exceeded \$50.00.

1           17.    On or about March 20, 2000, LUM traveled to the Philippines, and LUM  
2 did not pay for his airfare for this trip.

3           18.    Lucky Chances Casino and/or Person B paid for and caused to be paid for  
4 the airfare for this March 20, 2000, trip, worth over \$50.00, which was arranged through  
5 Lucky Tours.

6           19.    On or about March 31, 2000, LUM signed a California Statement of  
7 Economic Interest Form 700 for the year 1999 under penalty of perjury. On the form, he  
8 indicated that he had no reportable interests, including gifts, during the year 1999.

9           20.    On or about April 3, 2000, LUM caused the Town of Colma to mail his  
10 1999 Form 700, Statement of Economic Interest, to the Fair Political Practice  
11 Commission in Sacramento, California, via the U.S. mail.

12          21.    On or about May 16, 2000, LUM and Person A traveled to the Philippines.  
13 Person B paid for and caused to be paid for the trip which was arranged through Lucky  
14 Tours. The cost of LUM's airfare for this trip exceeded \$50.00.

15          22.    On or about June 14, 2000, during a Colma City Council meeting, LUM  
16 moved to adopt, and voted to adopt, Resolution 2000-38, renewing the Conditional Use  
17 Permit at 1700 Hillside Boulevard, the location of Lucky Chances Casino, knowing that  
18 Resolution 2000-38 would benefit person B.

19          23.    On or about June 14, 2000, during a Colma City Council meeting, LUM  
20 moved to adopt, and voted to adopt, Resolution 2000-39, an application for a cardroom  
21 permit to allow continued operation of a gambling establishment at 1700 Hillside  
22 Boulevard, the location of Lucky Chances casino, knowing that Resolution 2000-39  
23 would benefit Person B.

24          24.    On or about July 7, 2000, LUM and Person A traveled to the Philippines.  
25 Person B paid for and caused to be paid for LUM's airfare, which was arranged through  
26 Lucky Tours. The cost of LUM's airfare exceeded \$50.00.

27          25.    On or about January 11, 2001, LUM and Person A traveled to the  
28 Philippines on airline tickets paid for by Person B. The cost of LUM's airfare exceeded

1 \$50.00. The tickets were arranged by Lucky Tours.

2 26. On or about March 2, 2001, LUM signed a California Statement of  
3 Economic Interest Form 700 for the year 2000 under penalty of perjury. On this form,  
4 LUM indicated that he received no reportable interests, including gifts, for the year 2000.

5 27. On or about March 2, 2001, LUM caused the Town of Colma to mail his  
6 2000 Form 700, Statement of Economic Interest, to the Fair Political Practice  
7 Commission in Sacramento, California, via the U.S. mail.

8 28. On or about February 6, 2002, LUM signed a California Statement of  
9 Economic Interest Form 700 for the year 2001 under penalty of perjury. On the form, he  
10 indicated that he had no reportable interests, including gifts, during the year 2001.

11 29. On or about February 6, 2002, LUM caused the Town of Colma to mail his  
12 2001 Form 700, Statement of Economic Interest, to the Fair Political Practice  
13 Commission in Sacramento, California, via the U.S. mail.

14 30. On or about October 9, 2002, LUM voted in favor of an Ordinance  
15 Amending Colma Municipal Code Section 4.931 to Establish Conditions Under Which  
16 Cardroom Employees May Play Cards ("Ordinance 597"), knowing that Ordinance 597  
17 would benefit Person B. Ordinance 597 allowed Person B and other casino employees to  
18 gamble at Lucky Chances Casino.

19 All in violation of Title 18, United States Code, Section 371.

20 COUNT TWO: (18 U.S.C. § 1341, 1346, and 2 – Honest Services Mail Fraud; Aiding  
21 and Abetting)

22 31. The Grand Jury realleges and incorporates by reference paragraphs 1  
23 through 30 of this Indictment as though fully set forth herein.

24 32. On or about March 3, 2000, in the Northern District of California, the  
25 defendant

26 PHILIP J. LUM,  
27 for the purpose of executing and attempting to execute the above-described material  
28 scheme to defraud, did knowingly cause an envelope to be delivered by the United States

1 mails according to the directions thereon, which envelope contained a California Form  
2 700, Statement of Economic Interest, which reported the year 1999, signed by LUM  
3 under penalty of perjury, and stating that LUM did not receive any reportable interests,  
4 which was materially false in that LUM did, in fact, receive a gift in excess of \$50 during  
5 the reporting period of the year 1999, in violation of Title 18, United States Code,  
6 Sections 1341, 1346, and 2.

7 COUNT THREE: (18 U.S.C. § 1341, 1346, and 2 – Honest Services Mail Fraud; Aiding  
8 and Abetting)

9 33. The Grand Jury realleges and incorporates by reference paragraphs 1  
10 through 30 of this Indictment as though fully set forth herein.

11 34. On or about March 2, 2001, in the Northern District of California, the  
12 defendant,

13 PHILIP J. LUM,

14 for the purpose of executing and attempting to execute the above-described material  
15 scheme to defraud, did knowingly cause an envelope to be delivered by the United States  
16 mails according to the directions thereon, which envelope contained a California Form  
17 700, Statement of Economic Interest, for the reporting year 2000, signed by LUM under  
18 penalty of perjury, and stating that LUM did not receive any reportable interests, which  
19 was materially false in that LUM did, in fact, receive a gift in excess of \$50 during the

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reporting period of the year 2000, in violation of Title 18, United States Code, Sections 1341, 1346, and 2.

DATED:

A TRUE BILL.

FOREPERSON

KEVIN V. RYAN  
United States Attorney

MARK L. KROTOSKI  
Chief, Criminal Division

(Approved as to form: AUSA HUA)